



STATE OF NEVADA
COMMISSION ON ETHICS
<http://ethics.nv.gov>

MINUTES
of the meeting of the
COMMISSION ON ETHICS
June 11, 2009

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics. A certified court reporter transcribed the meeting and a transcript is available for purchase from Sunshine Reporters.

The Commission on Ethics held a public meeting on Thursday, June 11, 2009, beginning at 9:00 a.m. at the following location:

Boardroom of the
Nevada Gaming Control Board
1919 E. College Parkway
Carson City, NV 89706

Call to Order, Roll Call.

Vice Chair George Keele called the meeting to order and called the roll at 9:09 a.m., Thursday, June 11, 2009. Vice Chair George Keele, John W. Marvel, John T. Moran, III, Erik Beyer and James M. Shaw were present.

Also present were Adriana G. Fralick, Esq., General Counsel, Tami DeVries, Legal Research Analyst, Mike Vavra, Investigator and Michelle A. Ené, Executive Assistant.

Members of the public were asked to sign in, and the sign-in sheets are attached to the original minutes as Exhibit A.

1. Open session to hear testimony, receive evidence, deliberate, and render an opinion relating to Request for Opinion No. 09-01C submitted pursuant to NRS 281A.440(2)(b) alleging that certain conduct of David Humke, Dave Ajazzi, Robert Larkin, Dwight Dortch and John Mayer members of the Regional Transportation Commission (RTC), Washoe County, Nevada, violated NRS 281A.520(1).

Vice Chair Keele opened this agenda item. Commissioner Shaw disclosed a conflict he has due to the fact that he served for a number of years on the RTC and is very close to the members of that board that are before the commission today as well as the executive director and staff. Due to this conflict, Commissioner Shaw abstained from taking any action in this matter and was excused from the meeting. Commissioner Beyer disclosed that he served with Mr. Humke in the legislature and Mr. Mayer taught his daughter in school, but that he did not have any relationship with these gentlemen that would preclude him from acting in this matter. Commissioner Marvel disclosed that he too served with Mr. Humke in the legislature and has known the Aiazzi family all of his life, but he is not acquainted with these gentlemen in any manner that would preclude him from acting in this matter.

Leif Reid and Garrett Gordon with Lewis and Roca were present representing their clients David Humke, Dave Aiazzi, Robert Larkin, Dwight Dortch and John Mayer members of the Regional Transportation Commission of Washoe County. Messrs Humke, Aiazzi, Larkin, Dortch and Mayer were also present.

Vice Chair Keele opened by requesting Mr. Reid to provide oral argument on the two motions he filed in this matter a Motion for Summary Judgment and a Motion to Strike the First Amended Panel Determination.

Mr. Reid opened his remarks with a disclosure regarding a case that he represented before the Nevada Supreme Court against Commissioner Marvel, among others. After discussion it was determined that Marvel did not need to abstain in this matter and Mr. Reid could proceed as counsel for the subjects.

Motion to Strike First Amended Panel Determination:

Mr. Reid argued that the panel never met again after the panel proceeding to make an amended panel determination. He further argued that the Executive Director amended the panel determination and in doing so overstepped her authority and failed to abide by her own recusal from this matter.

Keele moved to deny the motion. Beyer seconded. Motion carried unanimously, the Motion to Strike First Amended Panel Determination was denied.

Motion for Summary Judgment:

Mr. Reid argued that the record reviewed by the panel did not highlight the fact that Mr. Humke and Mr. Dortch did not participate in the deliberations or voting on this matter. Mr. Dortch was not present at the meeting in question and Mr. Humke was not present at the time the matter in question was acted upon, all of which was clearly stated in the minutes.

Keele moved to deny the motion. Moran seconded. Discussion ensued. Motion carried unanimously, the Motion for Summary Judgment was denied.

Vice Chair Keele had the witnesses sworn in and then asked that they be seated in the lobby area until such time as they are called to testify. Witnesses sworn were: Greg Krause, Former Executive Director for RTC; Derek Morse, Interim Executive Director for RTC; Angela White, Marketing Communications Director for RTC; Michael Smart, Executive Director for NVEnergy; Tom Taelour, CFO for RTC; John Slaughter, Director of Management Services for Washoe County;

Stan Peck, Chief Legal Counsel for RTC; Matthew Michael Griffin, Deputy Secretary of State for elections; and Kimberly Rhodemyre, complainant.

At Vice Chair Keele's request, Ms. Fralick provided the Commission an overview of the facts and circumstances within the complaint and the results of the staff investigation. The complaint alleged that the conduct of David Humke, Dave Aiazzi, Robert Larkin, Dwight Dortch and John Mayer, members of the Regional Transportation Commission of Washoe County violated NRS 281A.520(1)(a) when these public officers requested or caused a governmental entity to expend public funds on two ballot questions.

The RTC members gave three responses to the complaint. The first was that the RTC members approved their overall budget on May 16th, 2008, before the final approval of the actual ballot questions. The ballot questions were not finalized on that date, and the expenditures on the ballot questions took place before the questions were placed on the ballot. The second was that the members relied in good faith on their legal counsel that the mailers were educational and not promotional. The final response was that NRS 281A.520(1)(a) does not apply to the publication disseminated in the course of carrying out a duty of a governmental entity.

Ms. Fralick concluded that the Commission panel decided that because the RTC spent public funds for the mailers in question, that just and sufficient cause exists for the Commission to hold a hearing and render an opinion on whether the members of RTC violated NRS 281A.520(1)(a).

The Commission heard testimony from the witnesses and received evidence in the matter.

Following the testimony of Matthew Griffin, Deputy Secretary of State for elections, Mr. Reid made a motion to dismiss the complaint based upon the evidence the Commission has received there is inadequate proof to establish that any of the subjects in this complaint requested or otherwise caused the RTC to incur an expense or to make an expenditure in support of the ballot question. The only expenditures were authorized in May and based upon the analysis of the last witness the ballot questions were not officially "on the ballot" until September 3, 2008.

Moran moved to dismiss the complaint against RTC members David Humke, Dave Aiazzi, Robert Larkin, Dwight Dortch and John Mayer and find that they did not violate the provisions of NRS 281A.520(1)(a). Moran explained that the motion was based upon the evidence that the date the ballot questions were "on the ballot" was either July 2008 or September 2008 and the vote to approve the budget that ultimately paid for the mailers was May 2008. Marvel seconded. Vice Chair Keele clarified that the Commission would vote to dismiss each subject individually.

As to Mr. Aiazzi, the motion carried unanimously.

As to Mr. Larkin, the motion carried unanimously.

As to Mr. Dortch, the motion carried unanimously.

As to Mr. Mayer, the motion carried unanimously.

As to Mr. Humke, the motion carried unanimously.

The Commission's written opinion will be prepared and published on the Commission's website.

2. Public Comments.

Gary Schmidt requested that he be allowed to make public comment during the time that agenda item 1 was being heard. Vice Chair Keele explained that the Commission traditionally provides for public comment at the end of the meeting and invited Mr. Schmidt to make his comments at that time. Mr. Schmidt was not present for public comment at the end of the meeting.

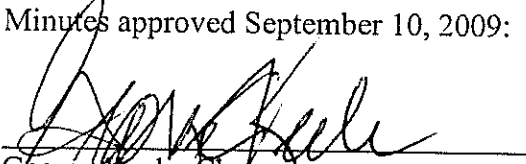
No public comment was made.

Keele adjourned the meeting at 2:23 p.m.

Minutes transcribed by:


Tami DeVries, Legal Analyst

Minutes approved September 10, 2009:


George Keele, Chair